

IN THE SUPREME COURT OF THE UNITED

Office-Supreme Court, U.S.  
F I L E D  
STATES  
NOV 1 1983  
ALEXANDER L. STEVAS,  
CLERK

Term, 19

No. 83-516

SHEET METAL WORKERS PENSION PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA; SHEET METAL WORKERS WELFARE PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA; and SHEET METAL WORKERS SAVINGS PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA,

Respondents/Plaintiffs,

vs.

BAER MANUFACTURING, INC., a California corporation; MARLIN C. BAER, JOSE MONROY, and RENEE G. BAER, doing business as BAER MANUFACTURING, INC.; MARLIN C. BAER, JOSE MONROY, and RENEE G. BAER, individually and as Shareholders, Directors, and Officers thereof,

Petitioners/Defendants.

SUPPLEMENT TO PETITION FOR FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND SUPPLEMENTAL APPENDIX

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TABLE OF CONTENTS

	<u>Page</u>
SUPPLEMENT TO ARGUMENTS I, IV, V, VI, IX OF PETITION . . .	1
CONCLUSION . . . . .	7

APPENDIX

SUPPLEMENTAL APPENDIX "A"

Order Striking Answer and  
For Default Judgment for  
Failure to Comply With  
Court Order Filed  
June 26, 1981; entered  
June 30, 1981

SUPPLEMENTAL APPENDIX "B"

Judgment  
Filed August 27, 1981  
Entered August 31, 1981

SUPPLEMENTAL APPENDIX "C"

Notice of Motion and Motion  
Of Defendants For An Order  
Extending The Time For Filing  
A Notice of Appeal; Points  
And Authorities And Order  
(Ex Parte)  
Filed August 31, 1981  
Lodged August 28, 1981

TABLE OF CONTENTS (Continued)

SUPPLEMENTAL APPENDIX "D"

Notice of Motion and Motion  
of Defendants for An Order  
Extending The Time for Filing  
A Notice of Appeal; Points  
And Authorities; Made Under  
Penalty of Perjury And Order  
(Ex Parte)  
Lodged September 25, 1981

SUPPLEMENTAL APPENDIX "E"

Order Vacating Default And  
Default Judgment, Etc., Re  
Defendant Jose Monroy,  
Individually  
Filed November 13, 1981  
Entered November 16, 1981

SUPPLEMENTAL APPENDIX "F"

Order Denying Defendants'  
Motions For Relief From  
Default and Default Judgment  
And For Extension of Time To  
Appeal  
Filed November 24, 1981  
Entered November 25, 1981

IN THE SUPREME COURT OF THE UNITED STATES

, Term, 19 \_\_\_\_\_

No. 83-516

SHEET METAL WORKERS PENSION PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA; SHEET METAL WORKERS WELFARE PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA; and SHEET METAL WORKERS SAVINGS PLAN OF SOUTHERN CALIFORNIA, ARIZONA AND NEVADA,

Respondents/Plaintiffs,

vs.

BAER MANUFACTURING, INC., a California corporation; MARLIN C. BAER, JOSE MONROY, and RENEE G. BAER, doing business as BAER MANUFACTURING, INC.; MARLIN C. BAER, JOSE MONROY, and RENEE G. BAER, individually and as Shareholders, Directors, and Officers thereof,

Petitioners/Defendants.

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The above-entitled proceedings in the U. S. Court of Appeals for the Ninth Circuit have the following case numbers:

Civil Case No. C.A. 82-5035  
DC Central California  
No. CV 81-652-MRP

SUPPLEMENT TO ARGUMENTS  
I, IV, V, VI, IX  
OF PETITION

As noted in the petition on page 14, this Court cannot reach a justifiable conclusion, unless this Court refers to the record on appeal which includes the Excerpt of Record of the District Court filed in the Court of Appeal for the Ninth Circuit. This becomes all the more true after this Court reads the following District Court's Orders, Judgment, and motions of petitioners, (attached as a Supplemental Appendix A through F), to wit:

A. Order striking answer, for default judgment, for failure to comply with court order (CR (DC) 36), entered June 30, 1981. (Appendix A).

B. Judgment (CR(DC)46) entered August 31, 1981. (Appendix B).

C. Motion to extend time to file notice of appeal (CR(DC)48) filed August 31, 1981. (Appendix C).

D. Motion to extend time to file notice of appeal (CR(DC)58) filed September 25, 1981. (Appendix D).

E. Order vacating default and default judgment as to defendant Monroy (CR(DC)71) entered November 16, 1981. (Appendix E).

F. Order denying defendants' motion for relief from default and default judgment and for extension of time to file notice of appeal (CR(DC)73) entered November 25, 1981. (Appendix F).

This Court will find that the motion of Monroy for relief (CR(DC) 53,68) was substantially identical with that filed by petitioners herein (CR(DC) 49,66,67,70). All of the District Court orders referred to above included Monroy as a defendant who allegedly failed to comply with the District Court's orders, as to whom the District Court held Monroy liable as an alter ego. Yet in the motions for relief the District Court held to the contrary

as to Monroy, but not as to petitioners herein.

In the Order denying relief to petitioners herein (Appendix F)

(1) The District Court said no good cause was shown. Yet petitioners' cause was substantially identical with Monroy's. No prejudice was alleged or shown by Sheet Metal (respondents). In fact none could be shown in a suit for money only due under an alleged contract. Collection was not and could not be an issue.

(2) The District Court said petitioners engaged in delaying and obstructionist tactics and wilfully ignored the processes of the Court. As Monroy and petitioners pointed out that was due to Mr. Chandler's outrageous conduct (petition p. 18) over which petitioners had no knowledge or control. Also, as pointed out in all courts below the alleged processes of the

Court were void.

(3) The District Court said it "reaffirms its finding that the 'alter ego' doctrine is applicable in this case. . . . This Court has already found after careful consideration that it would be inequitable and inappropriate to maintain the corporate veil . . . ."

An examination of all records including those mentioned above and in Appendix A through E, there is no record of any evidence or finding of alter ego, and the Court's reference to any such findings is wholly without support and clearly erroneous.

(4) The District Court said an award of punitive damages is appropriate when an obligation imposed by law has been violated, referring to California Civil Code, section 3097(k), and Labor Code, section 227. There is no such finding, and no supporting

evidence was presented at the hearing for default judgment (Petition pp. 35, et seq.). All respondents requested was a judgment for the amount owed under the contract. (CR (DC) 31, 34, 35, 36, 38). Moreover, California case law states that said Code sections are disciplinary and regulatory in nature, not applicable in civil actions for damages. (Petition, pp. 35 et seq., 40).

(5) The District Court said the motion of petitioners to extend the time for filing a notice of appeal was "filed after the initial thirty day period for appeal has run", and therefore "the burden is on defendants to establish excusable neglect."

FRAP Rule 4(a)(5) provides no excusable neglect need be shown if the motion is filed within or before the initial 30 days period for appeal has run. If this Court examines the two motions filed by petitioners (Appendix C. and D. attached) the

first motion (Appendix C) shows it was lodged by the Clerk on August 28, 1981; the judgment was entered on August 31, 1981 (Appendix B), the same date the motion was stamped filed. Thus, that motion was filed before the 30 days appeal period had run, and the District Court erred when it denied the motion on grounds no excusable neglect was shown because no such showing was required under said FRAP Rule.

The second motion (Appendix D) was lodged by the Clerk on September 25, 1981. That the motion was stamped "lodged" and not stamped filed should not prejudice respondents, as only the Clerk and the District Court have control over the motion after it has been deposited with the Clerk. For all purposes the motion was filed on September 25, 1981, and within the initial 30 days period for filing a notice of appeal. Thus no excusable neglect need be shown under

the FRAP Rule. Even if such a showing was required, the motion stated that one of the grounds for the extension of time was the filing of the motion for relief, and if denied petitioners will also appeal from the Court's judgment. Thus, the District Court erred in stating that the motion to extend the time for appeal was filed after the 30 days period for appeal had run. And good cause was shown to grant the extension in any event.

As seen from the above, it became necessary for me to include herein Appendix A through F without which this Court would not have the benefit of all the facts required for a proper determination of the questions presented. The petition for a writ of certiorari should be granted. Respectfully submitted.

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Counsel for Respondents

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
No. CV 81-652-MRP  
SHEET METAL WORKERS PENSION  
PLAN, etc., et al,

Plaintiffs,

vs.

BAER MANUFACTURING, INC.,  
etc., et al,

Defendants.

ORDER STRIKING ANSWER AND FOR  
DEFAULT JUDGMENT FOR FAILURE  
TO COMPLY WITH COURT ORDER

Filed June 26, 1981  
Clerk, U.S. District Court  
Central District of California

Entered June 30, 1981  
Clerk, U.S. District Court  
Central District of California  
By Deputy

SUPPLEMENTAL APPENDIX "A"

Plaintiffs' Motion for Order Striking  
Answer and for Default Judgment against  
defendants Baer Manufacturing, Inc.,  
Marlin C. Baer, Jose Monroy and Renee G.  
Baer, pursuant to Fed.R.Civ.P. 37(b) (2),  
41(b) and Local Rules 27 and 28, came on  
for hearing on June 22, 1981 before the  
Honorable Mariana R. Pfaelzer. The Court,  
having considered the oral arguments and  
the memoranda, affidavits and declarations  
submitted by counsel in connection with  
such Motion,

IT IS HEREBY ORDERED:

1. That the Answer filed March 9,  
1981 by defendants Baer Manufacturing,  
Inc., Marlin C. Baer, Jose Monroy and  
Renee G. Baer doing business as Baer  
Manufacturing, Inc., and Marlin C. Baer,  
Jose Monroy and Renee G. Baer, individu-  
ally and as shareholders, directors and  
officers thereof, be stricken as to them.

2. That judgment by default be entered

against such defendants and in favor of plaintiffs for the following relief:

A. That defendants Baer Manufacturing, Inc., Marlin C. Baer, Jose Monroy and Renee G. Baer are jointly and severally liable for, and indebted to, and shall pay to plaintiff Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada ("Pension Plan") the sum of \$6,174.91, said sum representing actual damages by defendants Marlin C. Baer, Jose Monroy and Renee G. Baer, as well as contributions due and owing the Pension Plan by Baer Manufacturing, Inc. for the months of June, September, October, November and December, 1980 and January, 1981; plus liquidated damages for the period of July, 1978 through January, 1981 in the amount of \$10,903.64.

B. That defendants Baer Manufacturing, Inc., Marlin C. Baer, Jose Monroy and

Renee G. Baer are jointly and severally liable for, and indebted to, and shall pay to plaintiff Sheet Metal Workers Welfare Plan of Southern California, Arizona and Nevada ("Welfare Plan") the sum of \$3,329.94, said sum representing actual damages by defendants Marlin C. Baer, Jose Monroy and Renee G. Baer, as well as contributions due and owing the Welfare Plan by Baer Manufacturing, Inc. for the months of June, September, October, November and December, 1980 and January, 1981; plus liquidated damages for the period of July, 1978 through January, 1981 in the amount of \$5,223.79.

C. That defendants Baer Manufacturing, Inc., Marlin C. Baer, Jose Monroy and Renee G. Baer are jointly and severally liable for, and indebted to, and shall pay to plaintiff Sheet Metal Workers Savings Plan of Southern California,

Arizona and Nevada ("Savings Plan") the sum of \$7,685.26, said sum representing actual damages by defendants Marlin C. Baer, Jose Monroy and Renee G. Baer, as well as contributions due and owing the Savings Plan by Baer Manufacturing, Inc. for the months of June, September, October, November and December, 1980 and January, 1981; plus liquidated damages for the period of July, 1978 through January, 1981 in the amount of \$7,205.25.

D. That defendants Baer Manufacturing, Inc. Marlin C. Baer, Jose Monroy and Renee G. Baer are jointly and severally liable for and shall pay to plaintiffs as and for punitive damages, for their wilful, malicious and oppressive failure to provide mechanics lien information and failure to pay contributions with fraudulent intent as set forth in the Fourth and Fifth

Causes of Action in Plaintiffs' complaint in the amount of \$300,000.00

E. That defendants Baer Manufacturing, Inc., Marlin C. Baer, Jose Monroy and Renee G. Baer jointly and severally shall pay reasonable attorneys fees to plaintiffs in the amount of \$4,750.00 and costs of suit in the amount of \$372.00.

F. That defendants Baer Manufacturing, Inc., Marlin C. Baer, Jose Monroy and Renee G. Baer jointly and severally shall pay interest at the rate of seven percent per annum to plaintiffs on all sums due and owing from the date of entry of this Judgment.

DATED: June 26, 1981.

/s/ Mariana R. Pfaelzer

United States District Judge

SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. CV 81-652 MRP

SHEET METAL WORKERS PENSION  
PLAN, etc., et al,

Plaintiffs,

vs.

BAER MANUFACTURING, INC.,  
etc., et al,

Defendants.

JUDGMENT

Filed August 27, 1981  
Clerk, U. S. District Court  
Central District of California

Entered August 31, 1981  
Clerk, U. S. District Court  
Central District of California  
By Deputy

SUPPLEMENTAL APPENDIX "B"

This action came on for hearing before the Honorable Mariana R. Pfaelzer, United States District Judge, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the plaintiffs, Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada; Sheet Metal Workers Welfare Plan of Southern California, Arizona and Nevada; and Sheet Metal Workers Savings Plan of Southern California recover of the defendants, Baer Manufacturing, Inc., Marlin C. Baer, Jose Monroy and Renee G. Baer, the sum of \$17,190.11 in actual damages, \$23,332.68 in liquidated damages and \$300,000.00 in punitive damages. Plaintiff shall recover of defendants reasonable attorneys' fees in the amount of \$4,750.00 and costs of suit in the amount of \$372.00. Defendants shall pay

interest at the rate of seven percent per annum to plaintiffs on all sums due and owing from the date of entry of this Judgment.

DATED: August 27, 1981.

/s/ Mariana R. Pfaelzer

United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. CV 81-652 MRP

SHEET METAL WORKERS PENSION  
PLAN, etc., et al,

Plaintiffs,

vs.

BAER MANUFACTURING, INC.,  
etc., et al,

Defendants.

NOTICE OF MOTION AND MOTION OF  
DEFENDANTS FOR AN ORDER EXTENDING  
THE TIME FOR FILING A NOTICE OF  
APPEAL; POINTS AND AUTHORITIES  
AND ORDER  
(Ex Parte)

Filed August 31, 1981  
Clerk, U.S. District Court  
Central District of California

Lodged August 28, 1981  
Clerk, U.S. District Court  
Central District of California

SUPPLEMENTAL APPENDIX "C"

TO THE ABOVE-ENTITLED COURT:

Defendants Baer Manufacturing, Inc.;  
Marlin C. Baer, Jose Monroy; Renee G. Baer;  
each, do hereby move the above-entitled  
court to make the following court order:

1. The court make an order extending  
the time for filing a notice of appeal in  
this case to and including September 30,  
1981.

This motion is made on each of the  
following grounds:

1. That defendants will move for  
relief from their default and judgment by  
default at the earliest possible date.

2. That defendants were totally  
unaware of said judgment until on or about  
July 20, 1981, when defendant Renee Baer  
received via U. S. mail, copies of five  
separate writs of execution.

3. That defendants' attorney of  
record, namely, Jackson E. Chandler, has  
disappeared or absconded and a search has  
been made for him by defendants and by

Mike Sullivan (who is very well known to Mr. Chandler) without success. His whereabouts are completely unknown. The last time defendants heard from Mr. Chandler was, as the undersigned was informed and believes and thereon alleges, prior to June 30, 1981. Applicants have now retained the undersigned to represent them in the above-entitled case.

4. That if this court denies the defendants' motion for relief when made, defendants intend to and will appeal from this court's judgment by default.

5. Under Rule 4(a)(1)(5) FRAP, this court has the power and authority to grant this motion. Said Rule provides that the District Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a), and in that case the motion may be ex parte. Here, the judgment was made and filed on June 26, 1981, and entered on

June 30, 1981. The 30 days to file a notice of appeal expired on July 30, 1981. The additional 30 days within which to file this motion expires on August 31, 1981, a Monday. The first time applicants learned of the Order of this court striking answer and for default judgment was on August 20, 1981, when Mr. Ferrara advised defendants in his office.

Said motion is based on the following:

1. This motion which is made under penalty of perjury.
2. The court's file of this case.
3. The minutes of the court in this case.
4. The points and authorities cited above.

SUBSTITUTION OF ATTORNEYS

5. Because of the shortness of time involved, defendants request that the court allow this motion to go forward until defendants can get together to sign the designa-

tion of a new attorney as required by  
Local Rule 110-10(b). Obviously, a  
substitution of attorneys is not available  
because of Mr. Chandler's disappearance.

WHEREFORE, defendants request that  
this motion be granted and an order made  
in accordance with Rule 4(a)(5) FRAP.

I declare under penalty of perjury  
that the foregoing is true and correct.

Executed at Los Angeles, California,  
on August 28, 1981.

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/s/ NICOLAS FERRARA, ESQ.

Attorney for Defendants

ORDER

GOOD CAUSE APPEARING from the within  
above motion of defendants, and it appear-  
ing to the satisfaction of the court that  
the motion should be granted, the court  
grants said motion, and

IT IS ORDERED that the time for  
defendants to file their notice of appeal  
from the court's judgment by default  
entered in this case against defendants  
on June 30, 1981, is extended to and  
including September \_\_\_\_\_, 1981.

DATED: August 28, 1981.

AUG 31, 1981

/s/ Mariana R. PfauZer

United States District Judge

DENIED ON THE GROUND THAT  
THERE HAS BEEN NO SHOWING  
OF GOOD CAUSE OR EXCUSABLE  
NEGLECT BY APPLICANTS.  
THERE ARE NO DECLARATIONS  
BY THEM.

NOTE: The Clerk advised petitioners'

counsel the judgment was filed on June 26, 1981, and entered on June 30, 1981, which was not yet in the Court's file. Based on that representation and believing the judgment was entered on June 30, 1981, the motion was filed as a motion filed after the initial 30 days to appeal had expired. Later counsel learned the judgment was filed on August 27, 1981, and entered on August 31, 1981, the same date the motion was denied. Whereupon a second motion was filed before the 30 days time to appeal expired. See Appendix D.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. CV 81-652 MRP

SHEET METAL WORKERS PENSION  
PLAN, etc., et al,

Plaintiffs,

vs.

BAER MANUFACTURING, INC.,  
etc., et al,

Defendants.

NOTICE OF MOTION AND MOTION OF  
DEFENDANTS FOR AN ORDER EXTENDING  
THE TIME FOR FILING A NOTICE OF  
APPEAL; POINTS AND AUTHORITIES;  
MADE UNDER PENALTY OF PERJURY  
AND ORDER  
(Ex Parte)

Lodged September 25, 1981  
Clerk, U.S. District Court  
Central District of California

SUPPLEMENTAL APPENDIX "D"

TO THE ABOVE-ENTITLED COURT:

Defendants Baer Manufacturing, Inc.; Marlin C. Baer, Jose Monroy; Renee G. Baer; each, do hereby move the above-entitled court to make the following court order:

1. The court make an order extending the time for filing a notice of appeal in this case to and including October 30, 1981.

This motion is made on each of the following grounds:

1. That defendants have moved for relief from their default and judgment by default and their motion has been filed with the court.

2. That defendants were totally unaware of the Order for judgment until on or about July 20, 1981, when defendant Renee Baer received via U.S. mail, copies of five separate writs of execution.

3. That defendants' attorney of record, namely, Jackson E. Chandler, has disappeared or absconded and a search has been made for him by defendants and by Mike

Sullivan (who is very well known to Mr. Chandler) without success. His whereabouts are completely unknown. The last time defendants heard from Mr. Chandler was prior to June 30, 1981. Applicants have now retained the undersigned to represent them in the above-entitled case.

4. That if this court denies the defendants' motion for relief, defendants intend to and will appeal from this court's judgment by default.

5. Under Rule 4(a)(1)(5) FRAP, this court has the power and authority to grant this motion. Said Rule provides that the District Court, upon a showing of excusable neglect, or good cause, may extend the time for filing a notice of appeal upon motion filed before expiration of the initial thirty days after the date of entry of judgment as prescribed by this Rule 4(a), and in that case the motion may be ex parte. Here, the court's judgment was made and filed on August 27, 1981, and entered on

August 31, 1981. The thirty days to file a notice of appeal expires on September 30, 1981. The first time applicants learned of the Order of this court striking answer and for default judgment was on August 20, 1981, when Mr. Ferrara advised defendants in his office.

Said motion is based on the following:

1. The defendants "Notice of Motion and Motion For Orders Relieving Defendants From Default and Default Judgment; Vacating Order For Judgment and Judgment; No Jurisdiction; Each As Set Forth In This Motion; Declarations; and Points and Authorities", filed with the Court on September 25, 1981, which is incorporated herein by reference.

2. This motion which is made under penalty of perjury.

3. The court's file of this case.

4. The minutes of the court in this case.

5. The points and authorities cited above.

6. Designation of New Attorney of Record. Defendants have designated Nicolas Ferrara, Esq., 3600 Wilshire Boulevard, Suite 1732, Los Angeles, California 90010; Tel. No. (213) 381-3704, as their new attorney of record as required by Local Rule 110-10(b). Obviously, a substitution of attorneys is not available because of Mr. Chandler's disappearance. The designation has been filed with the court.

WHEREFORE, defendants request that this motion be granted and an order made in accordance with Rule 4(a)(5) FRAP.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California,  
on September 25, 1981.

/s/ Marlin C. Baer  
Defendant  
/s/ Renee G. Baer  
Defendant  
/s/ Jose Monroy  
Defendant

/s/ Nicolas Ferrara  
Attorney for Defendants  
BAER MANUFACTURING, INC.  
By:/s/ Renee G. Baer  
Secretary

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. CV 81-0652 MRP

SHEET METAL WORKERS PENSION  
PLAN OF SOUTHERN CALIFORNIA,  
ARIZONA AND NEVADA; SHEET  
METAL WORKERS WELFARE PLAN  
OF SOUTHERN CALIFORNIA,  
ARIZONA AND NEVADA; and  
SHEET METAL WORKERS SAVINGS  
PLAN OF SOUTHERN CALIFORNIA,

Plaintiffs,

vs.

BAER MANUFACTURING, INC., a  
California corporation;  
MARLIN C. BAER, JOSE MONROY,  
and RENEE G. BAER, doing  
business as BAER MANUFACTURING,  
INC.; MARLIN C. BAER, JOSE  
MONROY, and RENEE C. BAER,  
individually and as share-  
holders, directors and officers  
thereof; and SURETY COMPANY OF  
THE PACIFIC, a California  
corporation,

Defendants.

ORDER VACATING DEFAULT AND DEFAULT  
JUDGMENT, ETC., RE DEFENDANT JOSE  
MONROY, INDIVIDUALLY

Filed November 13, 1981  
Clerk, U.S. District Court  
Central District of California

Entered November 16, 1981  
Clerk, U.S. District Court  
Central District of California

SUPPLEMENTAL APPENDIX "E"

The Motion of Defendant JOSE MONROY, individually, for orders vacating Default and Default Judgment and other related orders came on duly for hearing on November 9, 1981 in this Court, the Honorable Marianna R. Pfaelzer, Judge, Presiding, and counsel for the parties appearing. After due consideration of all of the pleadings on file herein and oral argument thereon,

IT IS HEREBY ORDERED that:

1. The Default and Default Judgment previously ordered and entered by this Court is and shall be vacated solely as to defendant JOSE MONROY in his individual capacity for the grounds and on the premises set forth in said Defendant's Motion.

2. The Answer to the Complaint here-tofore filed is reinstated solely as to Defendant JOSE MONROY in his individual capacity with leave being granted to him to amend same.

3. All writs of execution, garnishment or any other writ arising from said Default and Default Judgment are vacated as such relate or may relate to Defendant Jose Monroy in his individual capacity.

DATED:

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UNITED STATES DISTRICT JUDGE

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

No. CV 81-652 MRP

SHEET METAL WORKERS PENSION  
PLAN, etc., et al,

Plaintiffs,

vs.

BAER MANUFACTURING, INC.,  
et al,

Defendants.

ORDER DENYING DEFENDANTS' MOTIONS  
FOR RELIEF FROM DEFAULT AND DEFAULT  
JUDGMENT AND FOR EXTENSION OF TIME  
TO APPEAL

Filed November 24, 1981  
Clerk, U. S. District Court  
Central District of California

Entered November 25, 1981  
Clerk, U. S. District Court  
Central District of California  
By Deputy

SUPPLIMENTAL APPENDIX "F"

Defendants' Baer Manufacturing, Inc,  
Renee G. Baer, and Marlin C. Baer motion  
for vacation of default and default judg-  
ment and request for an extension of time  
for filing a notice of appeal came on  
regularly for hearing on November 9, 1981  
before the Honorable Mariana R. Pfaelzer.  
The Court, having considered the papers  
filed and the oral arguments made, has  
concluded that defendants' motions be  
denied.

Federal Rule of Civil Procedure 55(c)  
provides that a Court may set aside an  
entry of default "for good cause shown".  
The standard for relief from an entry of  
default judgment is more stringent,  
although similar. In both instances,  
the Court may require a showing of an  
excuse or explanation for the default, a  
meritorious defense to the action, and  
the absence of substantial prejudice to  
the party not in default. 10 Wright &

Miller, Federal Practice and Procedure § 2692, at 302 (1973). Defendants have failed to establish any of these elements in a manner sufficiently compelling to warrant a vacation of the default and default judgment. To the contrary, these defendants have engaged in delaying and obstructionist tactics during the pendency of this suit. They have wilfully ignored the processes of the Court. Furthermore, the vacation of default and default judgment would deprive plaintiffs of relief to which they are entitled.

Defendants' claim that they have a meritorious defense to the default judgment is without merit. The Court reaffirms its finding that the "alter ego" doctrine is applicable in this case. Under the "alter ego" doctrine, a corporate entity may be disregarded when the corporation and the individuals no longer maintain separate personalities. In addition, the

"alter ego" doctrine is applicable when an inequitable result would follow from treating corporate acts as acts of the corporation alone. This Court has already found after careful consideration that it would be inequitable and inappropriate to maintain the corporate veil in the circumstances of this case.

Defendants' allegation that punitive damages ought not to be awarded in this case is also not convincing. The prohibition contained in California Civil Code § 3294 that punitive damages may not be awarded for the breach of an obligation arising from a contract does not preclude the award of punitive damages when an obligation imposed by law has been violated. The award of punitive damages in such a situation is proper even if the suit also involves the breach of a contract. See, e.g., Richardson v. Employers Liability

Assurance Corp., 25 Cal. App. 3d 232, 102 Cal. Rptr. 547 (1972), rev'd on other grounds, 9 Cal. 3d 566, 108 Cal.Rptr. 490 (1973). Plaintiffs' fourth and fifth causes of action allege violations of California Civil Code § 3097(k) and California Labor Code § 227.

Rule 4(a)(5) of the Rules of Appellate Procedure provides that upon motion filed not later than 30 days after the period for appeal under Rule 4(a) has run, the district court may extend the time for filing a notice of appeal if excusable neglect is shown. In this case the motion for an extension of time having been filed after the initial thirty day period for appeal has run, the burden is on the defendants to establish excusable neglect. Defendants have failed to establish the requisite excusable neglect.

IT IS THEREFORE ORDERED, ADJUDGED  
AND DECREED that,

1. Defendants' motion to vacate  
default and default judgment be denied,  
and

2. Defendants' motion to extend the  
time for filing of a notice of appeal be  
denied.

DATED: November 24, 1981.

/s/ Mariana R. Pfaelzer

United States District Judge

